



COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

NORTHERN REGIONAL OFFICE

13901 Crown Court, Woodbridge, Virginia 22193

(703) 583-3800

www.deq.virginia.gov

Matthew J. Strickler
Secretary of Natural Resources

David K. Paylor
Director

Thomas A. Faha
Regional Director

STATE WATER CONTROL BOARD ENFORCEMENT ACTION - ORDER BY CONSENT ISSUED TO

**MR. AND MRS. MICHAEL AND ELIZABETH CHIARAMONTE AND MR.
ALAN VAHABZADE**

**FOR
THE CHIARAMONTE PROPERTY
Unpermitted Activity**

SECTION A: Purpose

This is a Consent Order issued under the authority of Va. Code §§ 62.1-44.15, 62.1-44.15:25, and 62.1-44.15:48, between the State Water Control Board and Mr. and Mrs. Michael and Elizabeth Chiaramonte and Mr. Alan Vahabzade regarding the Chiaramonte Property for the purpose of resolving certain violations of State Water Control Law and the applicable regulations.

SECTION B: Definitions

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned to them below:

1. "Board" means the State Water Control Board, a permanent citizens' board of the Commonwealth of Virginia, as described in Va. Code §§ 10.1-1184 and 62.1-44.7.
2. "Construction activity" means any clearing, grading or excavation resulting in land disturbance of equal to or greater than one acre, or disturbance of less than one acre of total land area that is part of a larger common plan of development or sale if the larger common plan will ultimately disturb equal to or greater than one acre.

3. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia, as described in Va. Code § 10.1-1183.
4. "Director" means the Director of the Department of Environmental Quality, as described in Va. Code § 10.1-1185.
5. "Discharge" in the VWP Program means, when used without qualification, a discharge of a pollutant, or any addition of a pollutant or combination of pollutants, to state waters or waters of the contiguous zone or ocean other than a discharge from a vessel or other floating craft when being used as a means of transportation.
6. "Discharge" in the Construction Stormwater Program means the discharge of a pollutant.
7. "Discharge of a pollutant" in the Construction Stormwater Program means:
 1. Any addition of any pollutant or combination of pollutants to surface waters from any point source; or
 2. Any addition of any pollutant or combination of pollutants to the waters of the contiguous zone or the ocean from any point source other than a vessel or other floating craft which is being used as a means of transportation.
8. "Fill" means replacing portions of surface water with upland, or changing the bottom elevation of surface water for any purpose, by placement of any pollutant or material including but not limited to rock, sand, earth, and man-made materials and debris. 9 VAC 25-210-10.
9. "Fill Material" means any pollutant which replaces portions of surface water with dry land or which changes the bottom elevation of a surface water for any purpose. 9 VAC 25-210-10.
10. "Land disturbance" or "land-disturbing activity" means a man-made change to the land surface that potentially changes its runoff characteristics including clearing, grading, or excavation, except that the term shall not include those exemptions specified in Va. Code § 62.1-44.15:34.
11. "Mr. and Mrs. Chiaramonte and Mr. Vahabzade" means Mr. and Mrs. Michael and Elizabeth Chiaramonte and Mr. Alan Vahabzade. Mr. and Mrs. Chiaramonte and Mr. Vahabzade are "persons" within the meaning of Va. Code § 62.1-44.3.
12. "Notice of Violation" or "NOV" means a type of Notice of Alleged Violation under Va. Code § 62.1-44.15.

13. "NRO" means the Northern Regional Office of DEQ, located in Woodbridge, Virginia.
14. "Order" means this document, also known as a "Consent Order" or "Order by Consent," a type of Special Order under the State Water Control Law.
15. "Permit" or "Virginia Water Protection Permit" means an individual or general permit issued under Va. Code § 62.1-44.15:20 that authorizes activities otherwise unlawful under Va. Code § 62.1-44.5 or otherwise serves as the Commonwealth's certification under § 401 of the federal Clean Water Act (33 United States Code ("USC") § 1344.
16. "Pollutant" in the VWP program means any substance, radioactive material, or heat which causes or contributes to, or may cause or contribute to pollution. 9 VAC 25-210-10.
17. "Pollutant" in the Construction Stormwater Program means dredged spoil, solid waste, incinerator residue, filter backwash, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials (except those regulated under the Atomic Energy Act of 1954, as amended (42 U.S.C. § 2011 et seq.)), heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal, and agricultural waste discharged into water. . . ." 9 VAC 25-870-10.
18. "Pollution" means such alteration of the physical, chemical or biological properties of any state waters as will or is likely to create a nuisance or render such waters: (i) harmful or detrimental or injurious to the public health, safety or welfare, or to the health of animals, fish or aquatic life; (ii) unsuitable with reasonable treatment for use as present or possible future sources of public water supply; or (iii) unsuitable for recreational, commercial, industrial, agricultural, or other reasonable uses; provided that (a) an alteration of the physical, chemical, or biological property of state waters, or a discharge or deposit of sewage, industrial wastes or other wastes to state waters by any owner which by itself is not sufficient to cause pollution, but which, in combination with such alteration of or discharge or deposit to state waters by other owners is sufficient to cause pollution; (b) the discharge of untreated sewage by any owner into state waters; and (c) contributing to the contravention of standards of water quality duly established by the board, are "pollution." Va. Code § 62.1-44.3; 9 VAC 25-210-10.
19. "Property" or "Site" means the tract of land at 133 River Mountain Lane in Amissville, Virginia, owned by Mr. and Mrs. Chiaramonte, from which unpermitted discharges of stormwater associated with construction activity occurred.
20. "Registration Statement" means a registration statement for coverage under the General VPDES Permit for Discharges of Stormwater from Construction Activities
21. "Regulations" means the Virginia Water Protection Permit Program Regulations, 9 VAC 25-210 et seq.

22. "State Water Control Law" means Chapter 3.1 (§ 62.1-44.2 *et seq.*) of Title 62.1 of the Va. Code. Article 2.2 (Va. Code §§ 62.1-44.15:20 through 62.1-44.15:23) of the State Water Control Law addresses the Virginia Water Resources and Wetlands Protection Program.
23. "State waters" means all water, on the surface and under the ground, wholly or partially within or bordering the Commonwealth or within its jurisdiction, including wetlands. Va. Code § 62.1-44.3 and 9 VAC 25-210-10.
24. "Stormwater" means precipitation that is discharged across the land surface or through conveyances to one or more waterways and that may include stormwater runoff, snow melt runoff, and surface runoff and drainage. Va. Code § 62.1-44.15:24.
25. "Stormwater management plan" means a document or series of documents containing material describing methods for complying with the requirements of a VSMP or the VSMP Regulations. 9 VAC 25-870-10.
26. "SWPPP" means Stormwater Pollution Prevention Plan, which is a document that is prepared in accordance with good engineering practices and that identifies potential sources of pollutants that may reasonably be expected to affect the quality of stormwater discharges. A SWPPP required under a VSMP for construction activities shall identify and require the implementation of control measures, and shall include, but not be limited to the inclusion of, or the incorporation by reference of an approved erosion and sediment control plan, an approved stormwater management plan, and a pollution prevention plan. 9 VAC 25-870-10.
27. "Surface water" means all state waters that are not ground waters as defined in Va. Code § 62.1-255.
28. "Virginia Stormwater Management Act" means Article 2.3 (§ 62.1-44.15:24 *et seq.*) of Chapter 3.1 of Title 62.1 of the Va. Code.
29. "Va. Code" means the Code of Virginia (1950), as amended.
30. "VAC" means the Virginia Administrative Code.
31. "VЕСP" or Virginia Erosion and Sediment Control Program means a program approved by the Board that has been established by a VЕСP authority for the effective control of soil erosion, sediment deposition, and nonagricultural runoff associated with a land-disturbing activity to prevent the unreasonable degradation of properties, stream channels, waters, and other natural resources and shall include such items where applicable as local ordinances, rules, permit requirements, annual standards and specifications, policies and guidelines, technical materials, and requirements for plan review, inspection, enforcement where authorized in this article, and evaluation consistent with the requirements of this article and its associated regulations.

32. "VЕСP Authority" or "Virginia Erosion and Sediment Control Program Authority" means an authority approved by the Board to operate a Virginia Erosion and Sediment Control Program. An authority may include a state entity, including the Department; a federal entity; a district, county, city, or town; or for linear projects subject to annual standards and specifications, electric, natural gas, and telephone utility companies, interstate and intrastate natural gas pipeline companies, railroad companies, or authorities created pursuant to § 15.2-5102.
33. "VSMP" means the Virginia Stormwater Management Program, which is a program approved by the Soil and Water Conservation Board after September 13, 2011, and until June 30, 2013, or the State Water Control Board on and after June 30, 2013, that has been established by a VSMP authority to manage the quality and quantity of runoff resulting from land-disturbing activities and shall include such items as local ordinances, rules, permit requirements, annual standards and specifications, policies and guidelines, technical materials, and requirements for plan review, inspection, enforcement, where authorized in this article, and evaluation consistent with the requirements of this article and associated regulations. Va. Code § 62.1-44.15:24.
34. "VSMP authority" means an authority approved by the Board after September 13, 2011, to operate a VSMP or, until such approval is given, the Department. An authority may include a locality; state entity, including the Department; federal entity; or for linear projects subject annual standards and specifications in accordance with subsection B of § 62.1-44.15-31, electric, natural gas, and telephone utility companies, interstate and intrastate natural gas pipeline companies, railroad companies, or authorities created pursuant to § 15.2-5102. Va. Code § 62.1-44.15:24.
35. "VSMP Regulations" means the Virginia Stormwater Management Program (VSMP) Regulations, 9 VAC 25-870-10 et seq.
36. "Warning Letter" or "WL" means a type of Notice of Alleged Violation under Va. Code § 62.1-44.15.

SECTION C: Findings of Fact and Conclusions of Law

1. The Property is owned by Mr. and Mrs. Chiaramonte. Mr. Alan Vahabzade is the contractor that performed land disturbing activity on the Property. These activities included the construction of Pond 1 and maintenance of Pond 2 on the Property.
2. Rappahannock County is not a VSMP authority approved by the Board to operate a VSMP. Therefore, the Department is the VSMP authority for the Site.
3. Rappahannock County has an approved VЕСP program.
4. In October 2017, construction of Pond 1 began on the Property. Pond 2 existed on the Property prior to Mr. and Mrs. Chiaramonte purchasing the Property.

5. On January 30, 2018, DEQ staff conducted a site visit of the Property and made the following observations:
 - a. DEQ staff observed that land-disturbing activities of greater than one acre had occurred on the Property in an area subject to stormwater runoff. The operator had not registered for coverage under the 2014 General VPDES Permit for Discharges of Stormwater from Construction Activities, and no other certificate or permit was issued for the discharge of stormwater from construction activities on the Property. The operator had not submitted a permit application to the Virginia Stormwater Management Program (VSMP) authority and had not obtained VSMP authority approval to begin land disturbance. In addition, no documentation existed to indicate that an Erosion and Sediment (E&S) Control Plan had been approved or that an E&S Permit had been issued by the Virginia Erosion and Sediment Control Program Authority (VESCP), or that a stormwater management plan or pollution prevention plan had been approved for the site.
 - b. DEQ staff observed that the cut and fill slopes associated with the pond under construction were not stabilized in accordance with applicable Erosion and Sediment Control Laws and Regulations. In addition, the slopes and other disturbed areas that appeared to be at final grade, were denuded, with no stabilization measures applied.
 - c. DEQ staff did not observe any perimeter controls around the land disturbance occurring at the Property.
6. Va. Code §62.1-44.15:34.A states, in part, that a person shall not conduct any land disturbing activity until he has submitted a permit application to the VSMP authority that includes a state VSMP permit registration statement, if such statement is required, and after July 1, 2014, a stormwater management plan or an executed agreement in lieu of a stormwater management plan, and obtained VSMP authority approval to begin land disturbance.
7. Va. Code §62.1-44.15:55 states, in part, that except as provided in Va. Code §62.1-44.15:56 for state agency and federal entity land disturbing activities, no person shall engage in any land disturbing activity until he has submitted to the VESCP authority an erosion and sediment control plan for the land disturbing activity and the plan has been reviewed and approved.
8. 9 VAC 25-840-40(7) states that cut and fill slopes shall be designed and constructed in a manner that will minimize erosion. Slopes that are found to be eroding excessively within one year of permanent stabilization shall be provided with additional slope stabilizing measures until the problem is corrected.
9. 9 VAC 25-840-40(1) states that permanent or temporary soil stabilization shall be applied to denuded areas within seven days after final grade is reached on any portion of the site.

Temporary soil stabilization shall be applied within seven days to denuded areas that may not be at final grade but will remain dormant for longer than 14 days. Permanent stabilization shall be applied to areas that are to be left dormant for more than one year.

10. 9 VAC 25-840-40.4 states that sediment basins and traps, perimeter dikes, sediment barriers, and other measures intended to trap sediment shall be constructed as a first step in any land disturbing activity and shall be made functional before upslope land disturbance takes place.
11. 9 VAC 25-870-54(B) states that an erosion and sediment control plan consistent with the requirements of the Virginia Erosion and Sediment Control Law and regulations must be designed and implemented during construction activities. Prior to land disturbance, this plan must be approved by either the VESCP authority or the department in accordance with the Virginia Erosion and Sediment Control law and attendant regulations.
12. On February 14, 2018, DEQ issued a Warning Letter to Mr. and Mrs. Chiaramonte citing the aforementioned violations.
13. On December 21, 2018, DEQ staff re-inspected the Property. DEQ staff made the following observations:
 - a. Additional land disturbing activities had occurred at the Property. A total of approximately 7 acres of land disturbing activities was observed. Based on DEQ records, a registration statement for coverage under the General VPDES Permit for Discharges of Stormwater from Construction was submitted to DEQ on February 8, 2018. On February 14, 2018, DEQ sent correspondence to Mr. Vahabzade that the registration statement was incomplete. DEQ has not received the required information to complete the registration statement and has no record indicating that coverage under the General VPDES Permit for Discharges of Stormwater from Construction was approved.
 - b. An approved erosion and sediment control plan was not available at the Site. The VESCP authority informed DEQ on January 9, 2019, that the VESCP authority had not approved an erosion and sediment control plan for the Site.
 - c. A Stormwater Pollution Prevention Plan, including a pollution prevention plan and an approved stormwater management plan was not available at the Site. Subsequent file review revealed that Mr. Vahabzade submitted a stormwater management plan for the site, which was received by DEQ on April 23, 2018. DEQ sent a letter on July 10, 2018 notifying Mr. Vahabzade that the stormwater management plan was incomplete. DEQ has not approved a stormwater management plan for the Site.
 - d. Areas on cut and fill slopes associated with the ponds were eroding.

- e. Sediment was passing through, around, and over the silt fences on the Property. The silt fences had not been maintained or replaced.
 - f. Denuded areas were observed that had been dormant for more than 14 days and were not stabilized.
 - g. Approximately 900 linear feet of stream channel was observed to have been impacted due to flooding and placement of fill material through the construction of Pond 1 and Pond 2, and two culvert road crossings.
14. 9 VAC 25-870-310(A) states that except in compliance with a state permit issued by the board pursuant to the Virginia Stormwater Management Act, it shall be unlawful for any person to discharge stormwater into state waters from land disturbing activities.
15. Va. Code §62.1-44.15:34.A states, in part, that a person shall not conduct any land disturbing activity until he has submitted a permit application to the VSMP authority that includes a state VSMP permit registration statement, if such statement is required, and after July 1, 2014, a stormwater management plan or an executed agreement in lieu of a stormwater management plan, and obtained VSMP authority approval to begin land disturbance.
16. Va. Code §62.1-44.15:55 states, in part, that except as provided in Va. Code §62.1-44.15:56 for state agency and federal entity land disturbing activities, no person shall engage in any land disturbing activity until he has submitted to the VESCP authority an erosion and sediment control plan for the land disturbing activity and the plan has been reviewed and approved.
17. 9 VAC 25-870-54(C) states in part that a stormwater management plan consistent with the requirements of the Virginia Stormwater Management Act and regulations must be designed and implemented during construction activities. Prior to land disturbance, this plan must be approved by the VSMP authority.
18. 9 VAC 25-870-56(A) states in part that a plan for implementing pollution prevention measures during construction activities shall be developed, implemented, and updated as necessary. The pollution prevention plan shall detail the design, installation, implementation, and maintenance of effective pollution prevention measures as specified in 40 CFR 450.21(d) to minimize the discharge of pollutants....
19. 9 VAC 25-870-54(D) states that a pollution prevention plan that identifies potential sources of pollutants that may be reasonably expected to affect the quality of Stormwater discharges from the construction site and describe control measures that will be used to minimize pollutants in stormwater discharges from the construction site must be developed before land disturbance commences.
20. 9 VAC 25-870-54(C) states that a stormwater management plan consistent with the requirements of the Virginia Stormwater Management Act and regulations must be

designed and implemented during construction activities. Prior to land disturbance, this plan must be approved by the VSMP authority.

21. 9 VAC 25-840-40(7) states that cut and fill slopes shall be designed and constructed in a manner that will minimize erosion. Slopes that are found to be eroding excessively within one year of permanent stabilization shall be provided with additional slope stabilizing measures until the problem is corrected.
22. 9 VAC 25-840-40(8) states that concentrated runoff shall not flow down cut or fill slopes unless contained with an adequate temporary or permanent channel, flume, or slope drain structure.
23. 9 VAC 25-840-60(A) states in part that all erosion and sediment control structures and systems shall be maintained, inspected, and repaired as needed to insure continued performance of their intended function...
24. 9 VAC 25-840-40(1) states that permanent or temporary soil stabilization shall be applied to denuded areas within seven days after final grade is reached on any portion of the site. Temporary soil stabilization shall be applied within seven days to denuded areas that may not be at final grade but will remain dormant for longer than 14 days. Permanent stabilization shall be applied to areas that are to be left dormant for more than one year.
25. Va. Code §62.1-44.15:20.A states that except in compliance with an individual or general Virginia Water Protection Permit issued in accordance with this article, it shall be unlawful to: (3) Alter the physical, chemical, or biological properties of state waters and make them detrimental to the public health, animal or aquatic life, or to the uses of such waters for domestic or industrial consumption, or for recreation, or for other uses unless authorized by a certificate issued by the Board.
26. 9 VAC 25-210-50.A states that except in compliance with a VWP permit, unless the activity is otherwise exempted or excluded, no person shall dredge, fill, or discharge any pollutant into, or adjacent to surface waters; withdraw surface water; otherwise alter the physical, chemical, or biological properties of state waters regulated under this chapter and make them detrimental to the public health, to animal or aquatic life, or to the use of such waters for domestic or industrial consumption, for recreation, or for other uses;
27. As a result of the aforementioned violations, DEQ issued NOV No. 1901-000926 to Mr. and Mrs. Chiaramonte and Mr. Vahabzade on January 16, 2019.
28. DEQ staff met with Mr. Chiaramonte and Mr. Vahabzade on February 21, 2019, to discuss the NOV and corrective action. Subsequent to this meeting, Mr. Chiaramonte submitted a written response to DEQ dated March 4, 2019. As a result of a delineation conducted by Mr. Chiaramonte's consultant, revised impact totals were proposed. Based on the information submitted and aerial imagery of the Project, DEQ determined that a total of 515 linear feet (lf) of impacts to stream channel had occurred (125 lf associated

with Pond 1 and 390 lf associated with Pond 2), as a result of the construction of Pond 1 and as the result of a persistent functional impact associated with Pond 2 that is being perpetuated through the improvement and continued maintenance of the impoundment. By email provided August 5, 2020, Mr. Chiramonte and his designated agents clarified that direct impacts in relation to the maintenance and structural improvements of Pond 2 resulted in impact to 20 linear feet of stream channel, and that accumulated sediments within the pond are to be removed. Thus, provided Mr. and Mrs. Chiramonte and Mr. Vahadzabe remove accumulated sediments at Pond 2 in accordance with the Schedule of Compliance, which is incorporated as Appendix A of this Order, total stream channel impacts for Ponds 1 and 2 as they pertain to liabilities of the Chiramontes are 125 linear feet and 20 linear feet respectively. Total unauthorized impacts are 145 linear feet of stream channel, which is below the compensatory mitigation thresholds.

29. On March 15, 2019, DEQ staff conducted an additional inspection of the Property. At the time of the inspection, no corrective actions had been put into place onsite. Stabilization practices had not been applied to denuded and scoured areas, and sediment control measures had not been maintained. Subsequent to the inspection, an Intermediate Stabilization Plan for the Property was submitted to Rappahannock County. Comments were provided by the County and provisional approval was given for the plan, provided the comments were addressed.
30. On August 20, 2019, DEQ staff conducted an additional inspection of the Property. Site stabilization efforts had been were in place, however final stabilization of denuded areas was not achieved.
31. Based on the December 21, 2018, and March 15, 2019, DEQ inspection and subsequent NOV, the Board concludes that Mr. and Mrs. Chiramonte and Mr. Vahadzabe have violated 9 VAC 25-870-310(A), 9 VAC 25-870-54(A), 9 VAC 25-870-54(B), 9 VAC 25-870-56(A), 9 VAC 25-870-54(C), 9 VAC 25-870-54(D), 9 VAC 25-870-54(B), 9 VAC 25-840-60(A), 9 VAC 25-870-54(B), 9 VAC 25-840-40(4), 9 VAC 25-840-60(A), 9 VAC 25-870-54(B), Va. Code §62.1-44.15:34, 9 VAC 25-840-40(7), 9 VAC 25-840-40(8), 9 VAC 25-840-60(A), 9 VAC 25-840-40(1), 9 VAC 25-210-50.A, and Va. Code §62.1-44.15.55, Va. Code § 62.1-44.15:20.A as described in paragraphs C(3) through C(29), above.
32. In order for Mr. and Mrs. Chiramonte and Mr. Vahadzabe to return to compliance, DEQ and Mr. and Mrs. Chiramonte and Mr. Vahadzabe have agreed to the Schedule of Compliance, which is incorporated as Appendix A of this Order.

SECTION D: Agreement and Order

Accordingly, by virtue of the authority granted it in Va. Code §§ 62.1-44.15, the Board orders Mr. and Mrs. Chiramonte and Mr. Vahadzabe ,and Mr. and Mrs. Chiramonte and Mr. Vahadzabe agree to:

1. Perform the actions described in Appendix A of this Order; and,

2. Pay a civil charge of \$16,240.00 within 30 days of the effective date of the Order in settlement of the Virginia Water Protection Permit (VWPP) violations cited in this Order.
3. Pay a civil charge of \$14,180.00 within 30 days of the effective date of the Order in settlement of the Construction Storm Water (CSW) violations cited in this Order.

Payment shall be made by check, certified check, money order or cashier's check payable to the "Treasurer of Virginia," and delivered to:

Receipts Control
Department of Environmental Quality
Post Office Box 1104
Richmond, Virginia 23218

Mr. and Mrs. Chiaramonte and Mr. Vahadzabe shall indicate that the payment is being made in accordance with the requirements of this Order. Payment for CSW violations shall be made for deposit into the Virginia Stormwater Management Fund, and payment for VWPP violations shall be made for deposit into the Virginia Environmental Emergency Response Fund (VEERF). If the Department has to refer collection of moneys due under this Order to the Department of Law, Mr. and Mrs. Chiaramonte and Mr. Vahadzabe shall be liable for attorneys' fees of 30% of the amount outstanding.

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend this Order with the consent of Mr. and Mrs. Chiaramonte and Mr. Vahadzabe for good cause shown by Mr. and Mrs. Chiaramonte and Mr. Vahadzabe or on its own motion pursuant to the Administrative Process Act, Va. Code § 2.2-4000 *et seq.*, after notice and opportunity to be heard.
2. This Order addresses and resolves only those violations specifically identified in Section C of this Order. This Order shall not preclude the Board or the Director from taking any action authorized by law, including but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the facility; or (3) taking subsequent action to enforce the Order.
3. For purposes of this Order and subsequent actions with respect to this Order only, Mr. and Mrs. Chiaramonte and Mr. Vahadzabe admit the jurisdictional allegations, findings of fact, and conclusions of law contained herein.
4. Mr. and Mrs. Chiaramonte and Mr. Vahadzabe consent to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.

5. Mr. and Mrs. Chiaramonte and Mr. Vahadzabe declare they have received fair and due process under the Administrative Process Act and the State Water Control Law and waive the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to modify, rewrite, amend, or enforce this Order.
6. Failure by Mr. and Mrs. Chiaramonte and Mr. Vahadzabe to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.
7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
8. Mr. and Mrs. Chiaramonte and Mr. Vahadzabe shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other unforeseeable circumstances beyond their control and not due to a lack of good faith or diligence on their part. Mr. and Mrs. Chiaramonte and Mr. Vahadzabe shall demonstrate that such circumstances were beyond their control and not due to a lack of good faith or diligence on their part. Mr. and Mrs. Chiaramonte and Mr. Vahadzabe shall notify the DEQ Regional Director verbally within 24 hours and in writing within three business days when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:
 - a. the reasons for the delay or noncompliance;
 - b. the projected duration of any such delay or noncompliance;
 - c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and,
 - d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to so notify the Regional Director verbally within 24 hours and in writing within three business days, of learning of any condition above, which the parties intend to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.

9. This Order is binding on the parties hereto and any successors in interest, designees and assigns, jointly and severally.

10. This Order shall become effective upon execution by both the Director or his designee and Mr. and Mrs. Chiaramonte and Mr. Vahadzabe . Nevertheless, Mr. and Mrs. Chiaramonte and Mr. Vahadzabe agree to be bound by any compliance date which precedes the effective date of this Order.

11. This Order shall continue in effect until:

- a. The Director or his designee terminates the Order after Mr. and Mrs. Chiaramonte and Mr. Vahadzabe have completed all of the requirements of the Order;
- b. Mr. and Mrs. Chiaramonte and Mr. Vahadzabe petition the Director or his designee to terminate the Order after it has completed all of the requirements of the Order and the Director or his designee approves the termination of the Order; or,
- c. The Director or Board terminates the Order in his or its sole discretion upon 30 days' written notice to Mr. and Mrs. Chiaramonte and Mr. Vahadzabe.

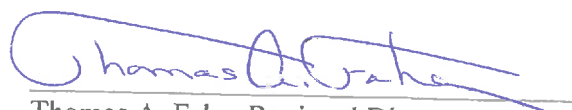
Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve Mr. and Mrs. Chiaramonte and Mr. Vahadzabe from their obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

12. Any documents submitted pursuant to this Order shall be submitted by Mr. and Mrs. Chiaramonte and Mr. Vahadzabe or an authorized representative of Mr. and Mrs. Chiaramonte and Mr. Vahadzabe.

13. This Order constitutes the entire agreement and understanding of the parties concerning settlement of the violations identified in Section C of this Order, and there are no representations, warranties, covenants, terms or conditions agreed upon between the parties other than those expressed in this Order.

14. By its signature below, Mr. and Mrs. Chiaramonte and Mr. Vahadzabe voluntarily agree to the issuance of this Order.

And it is so ORDERED this 22nd day of January, ~~2020~~²⁰²¹.


Thomas A. Faha, Regional Director
Department of Environmental Quality

Mr. and Mrs. Chiamonte and Mr. Vahadzabe voluntarily agree to the issuance of this Order.

Date: November 24 2020 By: Michael J. Chiamonte, landowner

Date: 11/24/2020 By: Elizabeth Chiamonte, landowner

Date: 11/24/2020 By: Alon Vahadzabe, agent of landowner

Commonwealth of Virginia
City/County of Calvert

The foregoing document was signed and acknowledged before me this 24 day of November, 2020, by Michael Chiamonte, Elizabeth Chiamonte, and Alon Vahadzabe.

Brianne M. Rogers
Notary Public



Registration No. _____

My commission expires: Feb. 4, 2023

Notary seal:

APPENDIX A SCHEDULE OF COMPLIANCE

1. Within 30 days of the execution of the Order, Mr. and Mrs. Chiaramonte and Mr. Vahadzabe shall complete the following to demonstrate compliance with the requirements of Erosion and Sediment Control Regulations (9VAC25-840), Stormwater Management Program Regulations (9VAC25-870) and the Construction General Permit Regulations (9VAC25-880).
 - a. Submit sufficient photo documentation clearly demonstrating that the entirety of site-wide denuded areas have achieved final stabilization with permanent vegetation of adequate density and uniform coverage.
 - b. Develop and submit to DEQ Stormwater Management Plan (SWMP) for DEQ review and approval. The SWMP must meet all applicable requirements of Stormwater Management Program Regulations (9VAC25-870) and the Construction General Permit Regulations (9VAC25-880).
 - c. Signed acknowledgement by Mr. and Mrs. Chiaramonte that any additional future onsite work is done in accordance with applicable State laws and implementing regulations.
2. Within 60 days of DEQ's written approval of the SWMP, Mr. and Mrs. Chiaramonte and Mr. Vahadzabe shall submit the following to DEQ to demonstrate compliance with the requirements Stormwater Management Program Regulations (9VAC25-870) and the Construction General Permit Regulations (9VAC25-880).
 - a. A record drawing of any post construction stormwater management structures identified in the final DEQ approved SWMP. The record drawings must meet all applicable requirements of Stormwater Management Program Regulations (9VAC25-870) and the Construction General Permit Regulations (9VAC25-880).
 - b. An executed maintenance agreement and documentation of recordation for any post construction stormwater management structures. The maintenance agreement must meet all applicable requirements of Stormwater Management Program Regulations (9VAC25-870) and the Construction General Permit Regulations (9VAC25-880).
3. Within 30 days of execution of the Order, Mr. and Mrs. Chiaramonte and Mr. Vahabzade shall submit an approvable Wetland and Stream Corrective Action Plan (CAP) for the restoration of state waters on the Property that have been impacted without a Permit that meets the requirements of 9 VAC 25-210-116. The CAP must be sufficient to achieve no net loss of existing wetland acreage and no net loss of functions in all surface waters in accordance with 9 VAC 25-210-116. Mr. and Mrs. Chiaramonte and Mr. Vahabzade shall respond to any DEQ Notice of Deficiency regarding the CAP within 14 calendar days. The CAP shall include the following, at a minimum:

- a. Signed acknowledgement by Mr. and Mrs. Chiaramonte that any future impacts to surface waters that occur onsite will be cumulative with pre-existing impacts to 145 linear feet of stream channel that occurred during the construction of Pond 1 and the maintenance and improvement of Pond 2. This acknowledgement is to specify that if such cumulative impacts exceed 1/10th of wetland and/or 300 linear feet of stream channel, compensatory mitigation will be required for all onsite impacts to surface waters.
 - b. Submit sufficient photo documentation clearly demonstrating that all denuded areas adjacent to and up-gradient of surface waters have achieved final stabilization with permanent vegetation of adequate density and uniform coverage.
 - c. Sediment Removal Plan with the following elements:
 - i. Graphic clearly depicting area and extent of current sediment accumulation within Pond 2, identifies an appropriate upland application site, and identifies erosion and sediment control practices to be implemented during the sediment removal process.
 - ii. Clearly identified methodology of sediment removal from surface waters and stipulating that heavy equipment use is prohibited in state waters.
 - iii. Methodology of upland sediment application, to include erosion and sediment controls to be implemented and immediate permanent stabilization with completion of sediment removal activities.
 - iv. Timeline of implementation.
 - v. Notification procedures, to include notification to DEQ with initiation and completion of work.
 - vi. Completion of work reporting to include submission to DEQ of photographic documentation of the location from which sediments were removed from Pond 2 and stabilization of the upland application area.
 - vii. Stipulation that completion of the Sediment Removal Plan, and release from the requirements set forth herein, requires final DEQ review and approval.
4. Upon DEQ approval of the CAP, Mr. and Mrs. Chiaramonte and Mr. Vahabzade shall begin implementation of the CAP in accordance with the schedule contained therein. Any changes to the approved Final CAP or schedule shall not be initiated without advance notice to and approval by DEQ. Mr. and Mrs. Chiaramonte and Mr. Vahabzade shall complete the CAP in accordance with its terms.
- a. If the performance criteria specified in the Final CAP are not achieved at the end of the applicable remedial period, then Mr. and Mrs. Chiaramonte and Mr. Vahabzade shall so advise DEQ in the applicable report for that monitoring period and shall describe why it appears the criteria could not be achieved. If DEQ thereafter so directs, Mr. and Mrs. Chiaramonte and Mr. Vahabzade shall submit to DEQ for review and approval an alternative CAP within 60 days of DEQ's letter requiring the same. The DEQ-approved alternative CAP shall then be

implemented by Mr. and Mrs. Chiaramonte and Mr. Vahabzade in accordance with the schedule set forth in the alternative CAP.

5. Unless otherwise specified in this Order, Mr. and Mrs. Chiaramonte and Mr. Vahabzade shall submit all requirements of Appendix A of this Order to:

VA DEQ – NRO Regional Office
Attention: Enforcement
13901 Crown Court
Woodbridge, VA 22193

